

LOL-HECO-IR-21

Ref: Kerstan Wong, HECO-200.

Question(s):

- a. What sources did you use in writing your testimony?
- b. Who assisted you in writing your testimony?
- c. How many drafts of your testimony did you write and/or did you submit?
- d. Who reviewed your testimony?
- e. Who approved your testimony?
- f. Please provide copies of drafts, supporting materials.

HECO Response:

HECO objects to the information request as the request appears to be overly broad or at least could be construed in that fashion. The request is overly broad, because the request for “sources” used “in writing your testimony” could be construed to apply to internal written communications (e.g., e-mails and attachments thereto) and written communications from HECO’s attorneys related to the testimony. To the extent that the request asks for internal e-mails and attachments to the e-mails, HECO objects to providing these e-mails and attachments, as these documents are privileged and confidential and should not be provided on public policy grounds. In the internal correspondence (e-mails and attachments thereto), the discussions are brief since HECO personnel understand the context of the subject matter and HECO believes that it is not cost effective to spend the time to generate elaborate discussion on the subject matter. If HECO is required to produce such internal correspondence, then the information would have to be generated in a fashion suitable for external publication, rather than

in its present form (which is suitable for internal discussions). This would be unduly burdensome and onerous, as well as counterproductive.

The internal e-mails are solely intended to be a tool to communicate information internally. The e-mails are an integral part of the decision making process in which thoughts are expressed, which may not be reflected in the written testimony. In addition, documents such as drafts of testimony, which are attached to the e-mails, are a necessary step in the decision making process and can result in candid dialogue. Were these documents subject to review by others in a regulatory proceeding, their candid nature and, therefore, their value could diminish significantly in the future, and HECO's internal communications and decision-making process would be seriously hampered.

By requesting access to such internal communications, this information request fails to balance the need for the information against HECO's need to manage. For example, the Federal Freedom of Information Act ("FFIA"), codified at 5 U.S.C. §552, and the Uniform Information Practices Act (Modified), codified at H.R.S. Ch. 92F, contain broad disclosure requirements based on the public's interest in open government. However, even such broad disclosure acts provide exceptions from the broad disclosure requirements that are intended to permit the efficient and effective functioning of government. It is common in such acts to protect from disclosure pre-decisional agency memoranda and notes, and/or government records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function. This is similar to the "deliberative process privilege" recognized by the Pennsylvania Public Utility Commission with respect to its own internal staff reports. See Pennsylvania Public Utility Commission v. West Penn Power Company, 73 PA PUC 122 (July 20, 1990), West Law Slip Op.

To the extent the request asks for communications that may contain the mental impressions, conclusions, opinions, or legal theories of HECO's attorneys (e.g., some attachments to e-mails include the mental impressions and conclusions of HECO's attorneys on drafts of testimony), HECO further objects to such request on the grounds that it asks for documents that are protected by the attorney-client privilege and the attorney work-product doctrine.

Further, HECO objects to the information request to the extent that it requests that HECO identify the "sources" used "in writing your testimony" and copies of such "sources" on the grounds that it is vague, ambiguous and could be construed to encompass hundreds of "sources". Many of these "sources" used "in writing your testimony" may not have even been pertinent to the substantive issues in the testimony, but instead related to non-substantive subjects (e.g., reviewing records to update biographical information, reviewing a dictionary to check spelling).

HECO also objects to disclosure of such internal communications even under a protective order. The value of such internal communications will be diminished if HECO is required to provide such documents, even if documents were provided pursuant to a protective order.

Without waiving these objections, HECO provides the following responses.

- a. The following documents, meetings and site visit were used to write my testimony HECO T-2:
1. July 1991 East Oahu 138kV Requirements Study;
 2. August 1992 East Oahu 138kV Requirements Study Updated;
 3. September 2000 Revised Final Environmental Impact Statement Kamoku-Pukele 138kV Transmission Line Project;
 4. January 29, 1999 letter, Timothy Johns, State Department of Land and Natural

Resources Letter to Tom Jezierny, HECO;

5. February 4, 1999 Meeting Summary, February 3, 1999 meeting with Department of Land and Natural Resources, et al;
 6. June 28, 2002, Board of Land and Natural Resources' Decision on DLNR File No.: OA-2801;
 7. December 2003 East Oahu Transmission Project Alternatives Study Update;
 8. December 2003 East Oahu Transmission Project: Options to the Koolau/Pukele Transmission Line Overload Problem;
 9. September 29, 2003 Magnetic Field Measurement and Modeling Assessment for Proposed HECO 46kV Underground Cables;
 10. East Oahu Transmission Project, Public Meetings Power Point Presentation;
 11. September 2003 East Oahu Transmission Project, A Report on Public Input Collected in June and July 2003, dated September 2003 by 3Point Consulting;
 12. Exhibits HECO-201 to HECO-214;
 13. Meetings and discussions with various HECO engineers;
 14. Site visit to the proposed project locations;
- b. Mr. Wong drafted HECO T-2. Legal counsel and HECO personnel reviewed the testimony. To the extent the comments were appropriate, I incorporated them into HECO T-2.
- c. HECO objects to this information request which seeks the number of drafts of HECO T-2 that were written or submitted on the grounds that it would be unduly burdensome and onerous. No records were kept on the number of drafts that were written or submitted. Without waiving any objections, several drafts were written and submitted for review but no record was kept as to how many drafts were written.

- d. See the response to subpart b.
- e. See the response to subpart b.
- f. Please see the objection to this information request and the response to subpart a regarding drafts of testimony.

Items #3, 7, 8, 9, 10, and 11 noted in the response to subpart a above were provided as exhibits to the Application. Item #12 was filed as exhibits to HECO T-2. Items #1, 2, 4, 5, and 6 are available for review at HECO's Regulatory Affairs office. Please contact George Hirose at 543-4787 to make arrangements for a review. There are no records available for items #13 and 14.